JAAFAR BIN DERIS v. PUBLIC PROSECUTOR

[A. Cr. J. (Rigby J.) April 7, 1956]

[K. B. — Criminal Appeal No. 24 of 1956]

Accomplice — Non-disclosure by prosecution that one of their witnesses was an accomplice.

In this case the appellant, who hired a trishaw and then sold it, was convicted of criminal breach of trust. One of the prosecution witnesses, who had previously been convicted and sentenced for voluntarily assisting in disposing of the trishaw, which he knew or had reason to believe was stolen property, was put before the Court without disclosure of the fact that he was an accomplice.

The learned Judge commented adversely on such non-disclosure and pointed out that the prosecutor should have elicited in examination the fact that the witness had been convicted and sentenced and thus enable the Court to decide on the credibility of his evidence, bearing in mind that he then had nothing to gain by giving false testimony on behalf of the prosecution.

CRIMINAL APPEAL.

Lim Cheng Poh for the appellant.

Syed Hamzah bin Tahir (Federal Counsel) for the respondent.

Rigby J. (delivering oral judgment) : — The appellant in this case was convicted by the learned Magistrate, sitting at Kota Bharu, of criminal breach of trust, contrary to section 406 of the Penal Code.

The brief facts of the case are that on the 29th of August he hired a trishaw from the complainant. Under the agreement he was to pay rent for the hire of the trishaw to the complainant, either daily or after an interval of a few days. He failed to do so. In fact, it would appear that on the day after he hired the trishaw, with the assistance of another man called as a witness for the prosecution, he sold the trishaw to a third party for the sum of $37.

The evidence against him at the trial consisted of the witness who assisted him in selling the bicycle, together with the purchaser.

I am now informed that the person who assisted him in selling the bicycle, on the 5th of October — nineteen days before the appellant himself was tried — was convicted in the Magistrate's Court of voluntarily assisting in disposing of property, to wit, a bicycle — this same bicycle — which he knew or had reason to believe to be stolen property. He was sentenced to six months' imprisonment. It would seem abundantly clear from the record that this witness was put before the Court as a perfectly honest witness, and the fact that he was in fact clearly an accomplice in disposing of the bicycle and that he had been convicted and sentenced as such, was never brought to the notice of the trial Court. It is deplorable that this should be so. Quite clearly, it was the duty of the prosecution, when calling this witness before the Court, to elicit from this witness at once that he had been an accomplice in disposing of the property, and that he had been convicted and sentenced as such. If this had been done, then the Court, although considering him as an accomplice, would have been in a position to decide as to the credibility of his evidence, bearing in mind the fact that he had already been convicted and sentenced and, therefore, had nothing to gain by giving false testimony on behalf of the prosecution. I repeat, quite clearly this should have been done by the prosecution.

I have some doubt whether in the circumstances I ought not to allow this appeal. But even assuming, as indeed was clearly the case, that this witness was an accomplice and that his evidence required corroboration, such corroboration is in fact to be found in the evidence of the purchaser, in respect of whom no suggestion is made that he had any guilty knowledge that the bicycle that he was in fact purchasing was stolen property.

The conviction is accordingly confirmed and the appeal against conviction is dismissed.

The sentence is reduced from one of twelve months' imprisonment to six months' imprisonment, to run as from the date of conviction.

Appeal dismissed.

Solicitors : *Pillai, Lim, Lee & Hwang.*

Re RAMASAMY CHETTIAR; KRISHNAN CHETTIAR v. SALAKSHI ACHI & ORS.

[O. C. J. (Storr J.) December 21, 1955]

[J. B. — Originating Summons No. 20 of 1952]

Hindu law — Will — Direction to widows to adopt — Failure to adopt — Whether intestacy arises.

In this case the testator in his will directed his two widows to adopt, which they have failed to do. The facts further showed that they had no intention to adopt. The issue before the Court, in view of that failure, was: "Does an intestacy arise and, if so, as to what part of the testator's estate?"

Held: as there was no gift over in the testator's will, there was an intestacy with regard to the residue of the estate of the testator.

Cases referred to :—

(1) *Varada Narayana Aiyangar v. Vengu Ammal & Ors.* I.L.R. 1938 Mad. 621; (1938) 2 Mad. L.J. 613.

(2) *Bamundoss Mookerjea v. Mussamut Tarinee* (1858) 7 Moo. I.A. 169.